

Campbelltown  
SA

Dear Sir/madam,

I wish to make a submission to the Legal and Constitutional Committee Inquiry into the *Migration amendment (designated unauthorized arrivals) bill 2006*

I find the legislation to amend the Migration Act unacceptable, as indeed I find unacceptable much of the government's treatment of people who arrive here unannounced, and then claim asylum.

Australia has a good record of accepting refugees through its humanitarian migration program, which has provided places for around 12,000 people a year. But at the same time its treatment of the much smaller number of people who make their own way here then exercise their legal right to claim asylum (the "unauthorized arrivals") is harsh.

In other wealthy developed countries asylum seekers may be detained for a short time initially, but generally can live in the community while their claims for asylum are assessed, and have some rights to social security, housing, health care etc. Living in the community allows these people to start to rebuild their lives.

The Australian government routinely interns these asylum seekers, including families and children on arrival. This internment is indefinite. Unlike other forms of State detention, its length is determined by staff of the Immigration Department, who work behind closed doors - not by a court working in open session. The current government continued to intern children for several years despite considerable evidence that this was not in the best interests of children. When courts ordered release of the children, the Minister appealed, and had them re-interned. The minister continued this practice, despite criticism from within Australia, e.g from the Human Rights Commissioner. When I visited my MP to complain about the internment of children, I was assured they would all be released within a week - only to find later that this had of course not happened. I find this treatment unacceptable, as do many other Australians, and as do many other countries. These are fundamental flaws with the system.

### **Lack of oversight of the detention process, and lack of accountability and transparency**

As much of the Immigration administration is carried out through regulations, it can be changed at will of the Minister, without Parliamentary review. The Department has in the past used to the full its powers to write its own rule book, and will doubtless continue to do so in the future. A certain amount of freedom to make regulations as required is of course a good thing; but in this case, I am not convinced that what has been done was necessary, or is in the long term interests of Australia, or in the long term interests of the people who are interned.

The courts were also initially excluded from any role in supervising the administration of what happens, to people who arrive here then seek asylum. After considerable voluntary work, it is now established that the courts have a role, albeit a very limited one: they can check that the Department of Immigration has followed due process, but they cannot themselves challenge migration decisions, for asylum seekers.

Concerned members of the public also have a role in supervising and observing the Australian government's treatment of asylum seekers, and many people have shown great willingness to voluntarily take on this role. But in general the public's access to people interned is very limited - one can visit, but permission is needed, visits are limited.

A final area of oversight is of course the media. I understand that the media are not permitted on or near immigration detention centres, and there have in the past been cases of journalist being arrested outside Baxter detention centre in SA.

So in summary, we seem currently to be in a situation where people who arrive here then claim asylum - as it is their right to do, under conventional international law since the early 1950's - and which has been enacted into Australian law - are treated harshly, and where the Department of Immigration seems not to be fully accountable for this - either in terms of oversight, or in terms of responding appropriately to well-founded criticism. ,

### **Inconsistent treatment of refugees who arrive here through the humanitarian migration program, and those who arrive unannounced then claim asylum on arrival**

The Australian government deserves credit for its humanitarian migration program which takes around 12,000 people a year. Those intakes are guaranteed in advance to the UNHCR. Australia is one of the few countries to do this. The number is comparable to other countries. The USA, guarantees around 70,000 places a year but *in addition*, unlike Australia takes around 60,000 onshore asylum seekers as well. The USA is more generous than us, as they guarantee the 70,000 offshore places regardless of the number of onshore arrivals they process. The Australian government by contrast, has been less generous, and has not increased the total number of refugees accepted, to cope with people who arrive here unannounced.

The number of refugees who arrive here by boat then claim asylum, is very small. The last wave, from 1999-2003, was at its height 2000 people a year, and of those, 90% eventually were assessed as having a genuine claim to refugee status. The long term average, from 1975 to 2003, would have been just 600 people a year (Brennan). Those people who arrived from 1999-2003, were interned for long periods in camps with basic facilities. They seemed to have had their claims subjected to a level of scrutiny, one can only describe as punishing. If released they were refused permanent asylum, not entitled to work, or claim social security, or medical benefits. I know this, from my association with a local Circle of Friends: these asylum seekers depended on the Circle for help, and the Circle had to provide a living allowance, plus medical care, housing etc from its own resources. The Committee should be aware that this was the reality at least for some of the people who made their own way to Australia then asked the Australian government for its protection.

The point is that the current treatment of asylum seekers is harsh, and could easily be made just a little more decent. The key question in justifying harsh treatment is whether the same ends could be achieved with less damage to the people affected. If they can, then the harsh treatment is morally wrong. The government's strategy is presumably to encourage migration through the official program and at the same time deter people from arriving then claiming asylum. I have seen nothing to convince me, that the harsh treatment of refugees, has been necessary to achieve these aims, nor that it has helped to achieve them. It is often said that the harsh treatment led to the ending of the wave of boats trying to get here in 2003, but according to Brennan, numbers of boats had started to decrease well before that.

Thoman Pogge has recently stressed the importance, of having governments clearly defined and preferably broadly agreed moral principles, on which to make consistent decisions. I am utterly bewildered what principles could apply, that make it right, to treat well one group of 12,000 refugees, but make it also appropriate to treat badly another group of 2,000 refugees, whose history and needs will be almost identical to the first's. When wars happen, refugees scatter to the four winds. There are two legal routes of getting asylum from Australia; one is to wait in a refugee camp; the other is to turn up here and put in an application. Yet the treatment of the two groups, could not be more different.

In summary the current administration has treated onshore asylum seekers harshly in the past. It has tried to explain itself, by arguing, astoundingly, that this harsh treatment is both necessary and morally right. It has attempted to minimize scrutiny of its treatment.

The current legislation if passed will do nothing to ameliorate treatment and in fact is likely to make it worse, by removing asylum seekers further from the scrutiny that has in the past been so vital to ensuring their well-being.

### **The proposed legislation, and its likely effects**

The legislation posted on the APH website seems to consist of detailed amendments, whose effects I find hard to interpret. I understand that its overall effect will be further lower conditions for people who arrive here unannounced then claim asylum as refugees:

- removing their ability to claim asylum in Australia after landing here (through an artificial legal device, concerning the definition of the Australian migration zone),
- the Australian government interning such people outside Australia e.g on Manus Island, or Nauru, or Christmas Island
- the Australian government refusing permanent asylum, even to people with genuine, well-founded claims to be refugees (these people are prevented from settling in Australia)
- The Australian government reneging on some of its international obligations to help refugees, by refusing to allow them to live in the Australian community while their claims are assessed

The policy of mandatory detention - perhaps more accurately described as indefinite internment - has devastating psychiatric effects on asylum seekers, as Robert Manne and David Corlett have recently documented. I have personal knowledge of this. My volunteer work has led me into contact with people who have been interned as part of this program. One was mentally unstable, difficult to live with, arbitrarily dragging furniture from his unit out into the street, and unable to replace it. At the time he owned one single bed and a convertible sofa; both ended up in hard rubbish and to the best of my knowledge he preferred to live in a bare flat. . He said both were faulty, but as I had personally given him that furniture, I know for a fact it was in fact in good order, and that many other people would have found it acceptable, at least temporarily. He presumably became unstable during internment in Australia - had he been that way before, he would not have been able to complete his journey here.

Moving the internment of asylum seekers offshore will further reduce the scrutiny of how the Australian government is treating these people. We have already seen this happen: concerned members of the public find it impossibly expensive to visit the offshore internment camps on Manus Island, Nauru, and Christmas Island. Even if people can pay to fly there - few can - visas may not be granted, and access may be denied. The almost complete lack of press reports about conditions in the camps on Nauru, Manus island, and Christmas Island, contrasts sharply with the many press reports on e.g Baxter. The media currently form a fourth element in the balance of power in our society, and they have a powerful role, alerting the public to abuses. If people are interned overseas, it will be easy for the government to prevent media scrutiny, and this would not be in the national interest. We are best with the internment camps kept onshore, where they can be monitored.

### **Inadequacy of mental health care for asylum seekers, even those in current detention**

Moving the centres offshore will mean that asylum seekers who are mentally ill, or who become mentally ill during internment, will not get adequate treatment. . We know mental health is a problem, as there are well founded reports of suicide attempts, and in addition detainees have to receive in-patient treatment at Glenside psychiatric hospital in Adelaide. Clearly the government has difficulty providing adequate psychiatric care for the current internees at Baxter, which is close to a major regional centre (Port Augusta) and just 3 hours drive from Adelaide. If the government cannot guarantee mental health services at Baxter, it will have an even more difficult task guaranteeing them overseas. The lack of mental health assistance at Nauru, is currently well documented.

### **Committee should satisfy itself about possible other uses of offshore detention centres, besides internment of asylum seekers**

A final more worrying thing is what else the offshore internment facilities might be used for. The high-security at Baxter must have been expensive to build, and the massive precautions seemed disproportionate to the minute threat that a few hundred asylum seekers posed. Especially when, in most other developed western countries,

similar asylum seekers were living out in the community. There is concern in Europe about 'extraordinary rendition' : authorities of one country detain people then ship them elsewhere for interrogation, and it is well attested that this involves torture (ref 2). One would have to question, why, when the threat that a few hundred refugees pose is so small, the Australian government is going to such expense, to build and maintain internment camps overseas. This Inquiry should ask a few questions about what those reasons might be, and who, besides refugees, the camps will hold.

I therefore ask the Senate to reject this legislation. In my view it is not needed at all, and what we need instead is legislation to ensure that asylum seekers who arrive here by boat receive humane treatment, in line with what those arriving in other western countries (e.g the UK; Sweden) receive.

I also ask the Senate to inquire carefully, into the nature of the internment camps to be built offshore

I also ask the Senate to ensure that detention centers - particularly those overseas - are not being used to facilitate torture, and will not be used to facilitate torture - on anyone, including asylum seekers, and others detained for whatever reasons. This is not an idle request, as the proposed Australian detention centers, would seem extremely similar, to the USA administration's Guantanamo detention centre, whose inmates seem unprotected by the law, and where there are well documented cases of abuse and torture.

Regards,

Michael Brisco, PhD

Sources:

Frank Brennan SJ AO: "Tampering with Asylum", UQP, 2003

Thomas Pogge, Oxford Amnesty Lecture; transcript obtained from the Radio National program "Encounter", 21 May 06 ([abc.net.au/rn](http://abc.net.au/rn))

Robert Manne/David Corlett: "Sending them Home": Schwartz Publishing, 2004